IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 866

SUN OIL COMPANY, *Appellant*,

v.

STATE MINERAL BOARD, *Appellee*,
MISS ALICE J. MILLER, *Intervenor-Appellee*.

Appeal to the Supreme Court of the United States From the Supreme Court of Louisiana

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PETITION FOR REHEARING OF *PER CURIAM* JUDGMENT DATED MAY 20, 1957 DISMISSING APPEAL FOR LACK OF A SUBSTANTIAL FEDERAL QUESTION

By *Per Curiam* decision dated May 20, 1957, this appeal has been dismissed and the said decision is quoted herewith:

> " '*Per Curiam:* The appeal is dismissed for want of a substantial federal question.' "

It is felt that this decision was certainly not based on the premise that the case comes under the rule of

Equitable Life Assurance Society of the United States v. *Brown,* 187 U. S. 308, 314, 23 S. Ct. 123, 125, 47 L. Ed. 190, 193 (1902) as certainly the question is a new and novel one and further argument will be based on the assumption that the Court felt that there was no substantial federal question involved under the principles of *Zucht* v. *King,* 260 U. S. 174, 176, 177, 43 S. Ct. 24, 25, 67 L. Ed. 194, 198 (1922).

It is further felt that perhaps because the writers of the jurisdictional statement were so completely convinced that serious federal constitutional questions were so squarely presented by the *Per Curiam* decision of the Supreme Court of the State of Louisiana, dated January 21, 1957 (Exhibit "A" of the jurisdictional statement herein) that perhaps certain aspects of the case were not sufficiently emphasized.

Up until the original opinion of the Supreme Court of Louisiana in this case, dated December 10, 1956 (Exhibit "B" of the jurisdictional statement herein) there was no question that the lease of an undivided interest was in all respects a thing of value. This principle was established by the cases of *Spence* v. *Lucas,* 138 La. 763, 70 So. 796 (S. Ct. 1916) and *Gulf Refining Co. of Louisiana* v. *Carroll, et al.,* 145 La. 299, 82 So. 277, (S. Ct. 1919). Leases of undivided interests are a merchantable commodity, frequently quite valuable, and they are being constantly dealt with in the oil and gas business. This has been universally recognized and constantly used. It was felt, and still is, that certain statements made as to the nature of a lease of an undivided interest in the said original opinion were an incorrect statement of the law. It is further felt that the *Per Curiam* decision fully re-instated the law as it stood prior to the December 10, 1956 decision and

this is the general view. The exact nature of a lease of an undivided interest is a vital one to the oil and gas industry, but it is of course not subject as such to the decision of this Honorable Court. The deprivation, however, of such a valid, contractual right, whatever its exact nature, without compensation is clearly an impairment of contract specifically forbidden by the Constitution of the United States and it is respectfully submitted that further opportunity to present this argument should be given to your appellant.

It is further submitted that landowners are being deprived of their right to freely contract for no justifiable reason which would allow their constitutional rights of due process and equal protection of the laws to be disregarded. Let us assume in this situation that there are 501 owners and that one of the owners owns ninety-nine per cent of the interest in the subject property. Except for some valid reason for the public good, what possible justification is there for allowing any 50 of the 500 owners of the one per cent ownership to deprive the owner of ninety-nine per cent of his right to freely contract or not contract? This obviously is allowing a very small portion of a small tail to wag a large dog for an inequitable unconstitutional reason. Other than mere convenience for some owners of undivided interests, there has never been any valid basis urged for this Act. *Convenience* has been the only real reason ever given. This most assuredly is not sufficient and we emphasize the fact that, although this statute on its face could be considered as applying to very few situations and being thereof of little public importance, actually the contrary is true. The statute is patently not giving "equal protection of the laws" to owners of interests in land where there are 500 or more owners. The principle that is applicable

here was established by the trailblazer case of *Yick Wo* v. *Peter Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220, (S. Ct. 1886) and it has been consistently followed. Insofar as covering the instant situation, it is particularly well expressed in the case of *State* v. *Old Tavern Farm, Inc.*, 133 Me. 468, 180 A. 473, 477, 101 A. L. R. 810, (Maine Supreme Judicial Court 1935) to-wit:

> "The rights of every person must stand or fall by the same rule of law that govern every other member of the body politic under similar circumstances, and every partial or private law which directly proposes to destroy or modify personal rights, or does the same thing by restricting the privileges of certain classes, and not of others, where there is no public necessity therefor, is unconstitutional and void."

It should be pointed out that if the validity of this Act is upheld as being a valid exercise of the police power of the State of Louisiana, there is no reason why a similar act should not be passed where there are a hundred or more co-owners and, going to the extreme, why there should not be an act passed where there are two or more owners. Such an idea is obviously abhorrent to the usual owner in indivision in the State of Louisiana who certainly would not desire to lose control of the right to lease his interest in land. Obviously an owner of a part interest in land is being deprived of a valuable right which an owner of the entire interest still has. This is definitely a restriction and invasion of the rights of owners of undivided interests as a class *without any public necessity.*

It is a fundamental principle of Louisiana law that no owner in indivision has to remain an owner in indivision. We quote Louisiana Civil Code Article 1308, to-wit:

"The action of partition will not only lie between co-heirs and co-legatees, but between all persons who hold property in common, from whatever cause they may hold in common."

We quote this fundamental principle and further set out the basic provisions which allow the owner to either have the property divided in kind or to have it sold at public auction (in certain situations) to liquidate the property.

Louisiana Civil Code Article 1322—Partition by mutual agreement.

"If all the heirs are of age and present or represented, the partition may be made in such form and by such an act as the parties interested agree upon."

Louisiana Civil Code Article 1323—Judicial partition.

"If, on the contrary, all the heirs are not present, if there be among them minors or persons interdicted, or if all the heirs of age and present do not agree to the partition or on the manner of making it, it shall be made judicially and in the form hereafter prescribed.

Louisiana R. S. 13:4971—Partition by licitation; co-owners absent and unrepresented, residence unknown, etc.

"Whenever any plaintiff shall own an undivided interest in real property situated in the state and shall be unwilling to continue to own the same in indivision, and when a record owner or owners of any interest or interests in the property shall be absent from and not represented in the State of Louisiana, or his or their residences shall be unknown to the plaintiff and have not been ascertained although the plaintiff declares under oath that he has made diligent effort to ascertain same,

or he or they shall be dead and the party desiring the partition shall not know who are the heirs of any such decedent, or when the party desiring the partition shall not know whether the record co-owner is or is not dead, the plaintiff co-owner being unwilling to remain in indivision may obtain a partition by licitation of the property in question regardless of its divisibility. Service on the absent unlocated, or unknown defendant or defendants, may be obtained by service on an attorney at law appointed to defend the suit for such defendant or defendants and by affixing copies of the petition and citation on the door of the room where the court in which the suit shall be pending is held, or on a bulletin board located near the entrance to the said court room."

The statute last cited would be particularly applicable to a situation where there were 500 or more owners as it furnishes a workable way to achieve the desired result. Owners in indivision do have this fundamental right to extricate themselves from an unwieldy situation if they so desire. This is being pointed out to show that there is not even a real practical need for this statute, and on the other hand, the rights of individual owners in indivision to contract or not contract as they see fit is being unconstitutionally taken from them. At the same time they are also being unconstitutionally forced to pay a ten per cent commission to the State Mineral Board for doing something that they may have no desire to do. For these reasons, it is additionally respectfully submitted that further opportunity to present this argument should be given to your appellant.

It is therefore respectfully submitted that a rehearing should be granted, that this appeal should be noted, and that the opportunity to submit briefs on the merits

and to present oral argument should be given to appellant.

Respectfully submitted,

ALVIN O. KING,
THOMAS COONEY HALL,
515 Weber Building,
Lake Charles, Louisiana,
Attorneys for Appellant.

KING, ANDERSON & SWIFT,
515 Weber Building,
Lake Charles, Louisiana,
Of Counsel.

Certificate of Counsel

I hereby certify that the foregoing Petition for Rehearing of *Per Curiam* Judgment Dated May 20, 1957 Dismissing Appeal for Lack of a Substantial Federal Question is presented in good faith and not for delay.

THOMAS COONEY HALL.

Dated: Lake Charles, La., June , 1957.

PROOF OF SERVICE

I, THOMAS COONEY HALL, one of the attorneys for Sun Oil Company, appellant herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ..... day of ....., 1957, I served copies of the foregoing Petition for Rehearing of *Per Curiam* Judgment Dated May 20, 1957 Dismissing Appeal for Lack of a Substantial Federal Question on the several parties thereto as follows:

1. On the State Mineral Board of the State of Louisiana by (a) mailing a copy in a duly addressed envelope with first-class postage prepaid, to its attorney of record, the Attorney General of the State of Louisiana, State Capitol Building, Baton Rouge, Louisiana, attorney for the said State Mineral Board; (b) mailing a copy in a duly addressed envelope with first-class postage prepaid, to its attorney of record, John L. Madden, Esq., Assistant Attorney General of the State of Louisiana, State Capitol Building, Baton Rouge, Louisiana, attorney for the said State Mineral Board; and (c) mailing a copy in a duly addressed envelope with first-class postage prepaid to C. J. Bonnecarrere, Esq., Secretary of the said State Mineral Board, State Capitol Building, Baton Rouge, Louisiana.

2. On the intervenor, Alice J. Miller, by mailing a copy thereof in a duly addressed envelope with first-class postage prepaid to her attorney of record as follows: James C. Henriques, Jr., Esq., American Bank Building, New Orleans, Louisiana, attorney for Alice J. Miller.

3. On Mrs. Therese Gonsoulin Rainold by mailing a copy in a duly addressed envelope with first-class postage prepaid to her attorney of

record, as follows: Robert R. Rainold, Esq., Richards Building, New Orleans, Louisiana, attorney for Mrs. Therese Gonsoulin Rainold.

4. On Belle Isle Corporation by mailing a copy in a duly addressed envelope with first-class postage prepaid to its attorney of record as follows: Isaac S. Heller, Esq., National Bank of Commerce Building, New Orleans, Louisiana, attorney for Belle Isle Corporation.

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THOMAS COONEY HALL,
Attorney for Appellant, Sun Oil Company,
515 Weber Building,
Lake Charles, Louisiana.